In the High Court of Himachal Pradesh Shimla.

Cr.Rev. No. 89 of 2001.

Judgment reserved on: 13.7.2007

Date of Decision: July 20, 2007

Sudershan Kumar ..Petitioner

Versus.

State of H.P. ..Respondent.

Coram
The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioner(s): Mr. Ramakant Sharma, Advocate.

For the Respondent(s): Mr. R.M.Bisht, Deputy Advocate General.

Deepak Gupta .

This revision petition is directed against the judgment of the learned Sessions Judge, Solan in Criminal Appeal No. 1/NL/10 of 1999, decided on 21.7.2001 whereby he has affirmed the judgment of the Additional Chief Judicial Magistrate, Nalagarh in Criminal Case No. 161/3 of 1994 decided on 22.2.1999 convicting the petitioner of having committed an offence under Section 16(1-A)(i),(ii) read with Section 7(i)& (ii) of the Prevention of Food Adulteration Act, 1954 (for short: the PFA Act) and sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 2000/-.

The Food Inspector inspected the premises of the accused at Naya-Gram on 20.3.1994. Sample of Haldi powder was taken and sent for analysis. The public analyst found the sample to be adulterated and misbranded and thereafter prosecution was launched against the accused. After the pre-charge evidence, the accused was charge sheeted and he pleaded not guilty and claimed trial. After recording evidence and hearing the parties, the trial court found the petitioner guilty and convicted and sentenced him as mentioned above.

Two grounds have been urged in this petition. The first ground is that no independent witness was associated with the sampling and the second ground is that there has been no compliance with Section 13(2) of the PFA Act.

As far as the first ground is concerned, by now it is well settled law that it is not necessary for the Food Inspector in every case to associate an independent witness. In the present case, it is clear that six packets of Haldi powder were purchased from the shop of the petitioner. This in fact has not been seriously disputed by him. Since, Haldi was in the packets, non-association of any independent witness loses any significance.

As far as the non-compliance of Section 13(2) of the PFA Act is concerned, PW3 Chatter Singh clearly stated that he has sent notice Ex.PW3/B to the accused on the address given in the notice which reads as under:-

> "Sh Sudershan Kumar s/o Sh Gopal Chand
> Karyana Merchants, Village: Naya-Gram, P.O.Jhajjra,
> Teh. Nalagarh, District Solan (HP)."

There is no manner of doubt that this was the complete address. The petitioner places much reliance on the receipt Ex.PW3/C issued by the postal department which reads as follows:-

> " Sh Sudershan Kumar s/o Gopal Chand,
> Vill: Naya-Gram, P.O. Jhajha, Teh Nalg
> Distt Solan".

The Court can take judicial notice of the fact that the officials of the postal department while issuing the receipt some time do not enter the complete address in the receipt. In the present case, PW3 has clearly stated that complete address as mentioned in the notice was also inscribed by him on the envelope.

The courts below have relied upon the judgment delivered by Justice Sh V.D.Misra, the then Chief Justice of this Court in **State of H.P. Versus Thakur Dass,** 1983 ILR(HP Series) 230, in which his Lordship observed as follows:-

> "38 Now the letter Ex.PW 3/A is addressed to "Shri Bagu s/o Sakerdeen, Village Rajudoo, P.O.Saboo, Tehsil Chamba." The prosecution has produced Shri Kailash Chand, PW3, who is a dealing assistant in the office of Local (Health) Authority, Chamba. He brought the record in court and proved the dispatch of the letter Ex.PW3/A under registered cover vide postal receipt Ex.PW3/B. Now, the whole defence is based on the postal receipt Ex.PW3/B which does not have the full address of the addressee. It only mentions the name of the respondent and the name of his father and then mentions the post office. It is on the basis of this postal receipt that the court has come to the

> conclusion that there is nothing on the record to show that the cover was properly addressed. It is a notorious fact that the post office does not in its postal receipts write the full address of the addressee which is given on the covers and I will take a judicial notice of this fact. Moreover, it is the case of the prosecution that this registered cover was never received back undelivered by the post office."

I am in respectful agreement with the observations made hereinabove. The mere fact that full address was not written in the postal receipt Ex.PW3/C does not mean that the notice was not sent at the address mentioned in the notice especially when PW3 Chatter Singh has clearly stated that he had written the address given in the notice on the envelope in which the notice Ex.PW3/B was sent to the petitioner.

In view of the above discussion, there is no merit in this revision petition which is accordingly dismissed. Bail bonds furbished by the accused-petitioner are cancelled.

July 20, 2007 (Deepak Gupta), J

s.